



[4910-13]

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 121**

[Docket No.: FAA-2016-9526; Amdt. No. 121-397]

**RIN 2120-AK95**

### **Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers; Related Aircraft Amendment**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments

**SUMMARY:** This rule allows air carriers to seek a deviation from the flight simulation training device (FSTD) requirements for related aircraft proficiency checks. As a result, this rule will eliminate an inconsistency that currently permits carriers that have obtained FAA approval to modify the FSTD requirements for related aircraft differences training, but not for corresponding proficiency checks. In doing so, it corrects an inadvertent omission from the Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers final rule.

**DATES:** Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Submit comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Send comments identified by docket number FAA-2016-9526 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.
- Mail: Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax comments to Docket Operations at 202-493-2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

*Docket*: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Sheri Pippin, Air Transportation Division, AFS-200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8166; e-mail [sheri.pippin@faa.gov](mailto:sheri.pippin@faa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Executive Summary**

This rule will allow air carriers to seek a deviation from the FSTD requirements for related aircraft proficiency checks based on a related aircraft designation and determination of an equivalent level of safety. As a result, this rule will eliminate an inconsistency that currently permits carriers that have obtained FAA approval to modify the FSTD requirements for related aircraft differences training, but not for corresponding proficiency checks.

### **II. Administrative Procedure Act and Legal Authority**

#### **A. Good Cause for Immediate Adoption**

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 553) authorizes agencies to dispense with notice and comment procedures for rules when the agency for “good cause” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking.

The FAA finds that notice and public comment to this final rule are unnecessary. This final rule corrects an inadvertent omission from the Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers (Crewmembers and Aircraft Dispatchers Training) final rule by providing certificate holders additional flexibility in the selection of an FSTD for related aircraft proficiency check maneuvers and procedures based on a determination of an equivalent level of safety. As a result, this rule is relieving for certificate holders. In addition, in the process of drafting and implementing the suite of rules culminating in the Crewmembers and Aircraft Dispatchers Training final rule, the

FAA sought comment on, and thoroughly considered, comments regarding related aircraft proficiency checks. The updates to § 121.441(f) contained in this final rule offer additional flexibility; in that, air carrier certificate holders can request permission to deviate from related aircraft proficiency check requirements when the proficiency check is conducted in full, or in part, in an FSTD. Therefore, the FAA has determined that notice and public comment are unnecessary prior to the adoption of this amendment.

#### B. Comments Invited

The FAA is adopting this final rule without prior notice and public comment because it corrects an inadvertent omission from the Crewmembers and Aircraft Dispatchers Training final rule and the FAA previously sought comment on and considered comments regarding related aircraft proficiency checks. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979), provide that to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice.

Accordingly, consistent with DOT Regulatory Policies and Procedures and 14 CFR 11.11, the FAA seeks comment on this Final Rule.

#### C. Authority for this Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. This rulemaking is promulgated under the authority described in 49 U.S.C. 106(f), which vests final authority in the Administrator for carrying out all functions, powers, and duties of the administration relating to the promulgation of regulations and rules, and 49 U.S.C. 44701(a)(5), which requires the Administrator to

promulgate regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security.

### **III. Background**

On November 12, 2013, the FAA published the Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers final rule (78 FR 67800). In that final rule, effective March 12, 2014, the FAA included opportunities for air carriers to modify training program requirements for flightcrew members when the air carrier operates multiple aircraft types with similar design and flight handling characteristics. The final rule also included opportunities for air carriers to seek a deviation to allow credit for flightcrew member qualification requirements, including proficiency checks, when the air carrier operates multiple aircraft types with similar design and flight handling characteristics.<sup>1</sup>

The final rule explained that due to differences in instrumentation and installed equipment, crewmembers trained on one variation of aircraft type may require additional training to safely and efficiently operate another variation of the same aircraft type. This additional training is identified in regulations as differences training.<sup>2</sup> The final rule further explained that the FAA, through the Flight Standardization Board (FSB), provides an analysis of the differences between variations of an aircraft type, which the FSB documents in an FSB report for a specific aircraft type. This report may include

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<sup>1</sup> As the FAA clarified in its final rule, the agency uses the term “related aircraft” when describing two or more aircraft of the same make (with either the same or different type certificates) that have been demonstrated and determined by the Administrator to have commonality to the extent that flightcrew member training, checking, recent experience, operating experience, operating cycles, and line operating flight time for consolidation of knowledge and skills may be reduced while still meeting the training and qualification requirements for service on the other aircraft. 78 FR at 67816.

<sup>2</sup> See §§ 121.400 and 121.418.

recommendations on reduced training frequency, reduced training elements or events, or use of a lower level FSTD than required by part 121 appendix E (Flight Training Requirements) for a specific maneuver or procedure.

Additionally, the final rule explained the rapid advancement in modern technologies, both in manufacturing techniques and systems design and application, can produce aircraft types of differing models and aerodynamic airframes, with similar handling or flight characteristics. These modern aircraft systems and displays may allow different type certificated aircraft to have common flight deck and systems designs, such that minimal differences training may be warranted. The FAA, through the FSB, can analyze these aircraft with different type certificates which may result in recommendations for training reductions.

#### *Statement of the Problem*

In the Crewmembers and Aircraft Dispatchers Training final rule, the FAA intended to extend fully the differences training concept to aircraft with different type certificates within the new provisions for related aircraft differences training. In addition, an air carrier may seek deviations for related aircraft proficiency checks, operating experience, operating cycles, line operating flight time for consolidation of knowledge and skills, and recency of experience.

In the Crewmembers and Aircraft Dispatchers Training final rule, the FAA added paragraph (f) to § 121.441, to allow the Administrator to approve a deviation to the proficiency check requirements based on a designation of related aircraft and after the Administrator determines the certificate holder can demonstrate an equivalent level of safety. Specifically, paragraph (f) allows a deviation from the frequency of proficiency

checks and from certain procedures and maneuvers required by appendix F (Proficiency Check Requirements). Paragraph (f) did not, however, include an allowance to obtain a deviation from the FSTD requirements specified in appendix F. As currently written, § 121.441(f) does not allow deviation if the FSB determines that the use of a lower level FSTD for a specific maneuver or procedure may be acceptable on a related aircraft proficiency check. Such a determination by the FSB would foreseeably be based on similarities in design and flight characteristics between the base aircraft and the related aircraft.

#### **IV. Discussion of Final Rule**

This final rule will correct an inadvertent omission from the Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers final rule by eliminating an inconsistency that currently permits air carriers (with FAA approval) to modify the FSTD requirements for related aircraft differences training, but not for related aircraft proficiency checks. Because the FAA intended to extend fully the differences training concept to related aircraft differences training and deviations, the FAA is revising § 121.441(f)(2) to allow a certificate holder to request a deviation from the FSTD requirements in paragraph (c) of § 121.441. To receive a deviation, the certificate holder must provide a designation of related aircraft and demonstrate an equivalent level of safety exists to justify the deviation. By this update, the request for deviation must include the level of FSTD to be used for each maneuver and procedure.

Requests for deviation remain voluntary. The FAA has determined this change would not adversely affect safety of aircraft operations. A deviation from any proficiency check requirement under § 121.441(f) is only available if the certificate holder has a

designation of related aircraft. Such a designation indicates the base aircraft and designated related aircraft have been demonstrated and determined by the Administrator to have commonality; the certificate holder must be able to demonstrate that it can maintain the equivalent level of safety in obtaining the designation.

## **V. Regulatory Notices and Analyses**

### **A. Regulatory Evaluation**

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Public Law 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.



Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this rule. This rule would remove additional requirements with respect to proficiency checks for aircraft of a related type, as long as FAA has made a determination that an equivalent level of safety is maintained. Given the relieving nature of this rule, the economic impact of this rule would be minimal cost.

The FAA has, therefore, determined that this rule is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866, and is not “significant” as defined in DOT's Regulatory Policies and Procedures.

#### B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Public Law 96-354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This rule would correct an inadvertent omission from the Crewmembers and Aircraft Dispatchers Training final rule and would eliminate an inconsistency that currently permits air carriers (with FAA approval) to modify the FSTD requirements for related aircraft differences training, but not for related aircraft proficiency checks. This action would result in increased flexibility for certificate holders. While the rule would likely impact a substantial number of small entities<sup>3</sup>, given the relieving nature of this rule, it would have a minimal positive economic impact.

Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

### C. International Trade Impact Assessment

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<sup>3</sup> Based on an analysis of publicly available information, the FAA assumed that the Crewmembers and Aircraft Dispatchers Training final rule would have an impact on a substantial number of small entities. We make the same determination in this rulemaking.

The Trade Agreements Act of 1979 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rule and determined that the rule will have the same impact on international and domestic flights and is a safety rule thus is consistent with the Trade Agreements Act.

#### D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$155 million in lieu of \$100 million. This rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

#### E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(1)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

The FAA has determined that there is no new information collection associated with this cost relieving amendment to related aircraft proficiency check requirements. The OMB previously approved the collection of such information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and it was assigned OMB Control Number 2120–0739.

#### F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

#### G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5-6.6 and involves no extraordinary circumstances.

## **VI. Executive Order Determinations**

### **A. Executive Order 13132, Federalism**

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

### **B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use**

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a “significant energy action” under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

### **C. Executive Order 13609, Promoting International Regulatory Cooperation**

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

## **VII. How To Obtain Additional Information**

### **A. Rulemaking Documents**

An electronic copy of a rulemaking document may be obtained by using the Internet —

1. Search the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visit the FAA's Regulations and Policies Web page at [http://www.faa.gov/regulations\\_policies/](http://www.faa.gov/regulations_policies/) or
3. Access the Government Printing Office's Web page at: <http://www.gpo.gov/fdsys/>.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9677.

#### B. Comments Submitted to the Docket

Comments received may be viewed by going to <http://www.regulations.gov> and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

#### C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the FOR FURTHER INFORMATION CONTACT heading at the beginning of the

preamble. To find out more about SBREFA on the Internet, visit

[http://www.faa.gov/regulations\\_policies/rulemaking/sbre\\_act/](http://www.faa.gov/regulations_policies/rulemaking/sbre_act/).

## **List of Subjects in 14 CFR Part 121**

Air carriers, Aircraft, Airmen, Aviation safety.

### **The Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 121 as follows:

## **PART 121--OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS**

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40119, 41706, 42301 preceding note added by Pub. L. 112-95, sec. 412, 126 Stat. 89, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44729, 44732, 46105; Pub. L. 111-216, 124 Stat. 2348 (49 U.S.C. 44701 note); Pub. L. 112-95, 126 Stat. 62 (49 U.S.C. 44732 note).

2. Amend § 121.441 by revising paragraphs (f)(1), (f)(2) introductory text, and (f)(2)(ii) to read as follows:

### **§ 121.441 Proficiency checks.**

\* \* \* \* \*

(f) \* \* \*

(1) The Administrator may authorize a deviation from the proficiency check requirements of paragraphs (a), (b)(1), and (c) of this section based upon a designation of related aircraft in accordance with §121.418(b) of this part and a determination that the certificate holder can demonstrate an equivalent level of safety.

(2) A request for deviation from paragraphs (a), (b)(1), and (c) of this section must be submitted to the Administrator. The request must include the following:

\* \* \* \* \*

(ii) Based on review of the related aircraft, the operation, and the duty position:

(A) For recurrent proficiency checks, the frequency of the related aircraft proficiency check, the maneuvers and procedures to be included in the related aircraft proficiency check, and the level of FSTD to be used for each maneuver and procedure.

(B) For qualification proficiency checks, the maneuvers and procedures to be included in the related aircraft proficiency check and the level of FSTD to be used for each maneuver and procedure.

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Issued under authority provided by 49 U.S.C. 106(f) and 44701(a) in Washington, DC, on December 8, 2016.

Michael P. Huerta,  
Administrator.

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